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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

DALLIN YOUNG,

Plaintiff and Appellant,

v.

JACQUELINE M. KELLY, in her official
capacity as City Clerk for the City of Imperial
Beach,

Defendant and Respondent.

D074143

(Super. Ct. No. 37-2018-00010391-
CU-WM-CTL)

APPEAL from a judgment of the Superior Court of San Diego County, Kenneth J. Medel, Judge. Reversed and remanded with directions.

McElfresh Law and Jessica C. McElfresh for Plaintiff and Appellant.

McDougal Love Boehmer Foley Lyon & Canlas, Steven E. Boehmer, Carrie L. Mitchell and Elizabeth A. Mitchell for Defendant and Respondent.

Dallin Young appeals a judgment dismissing his petition for an alternative writ of mandate, which petition sought injunctive relief after Jacqueline M. Kelly, in her official capacity as City Clerk for the City of Imperial Beach (City), rejected his petitions for an

initiative measure relating to City's marijuana regulations. In rejecting his petitions, Kelly cited their noncompliance with Elections Code section 9207's¹ requirement that the petitions include a copy of the notice of intention to circulate petition that Young had previously filed with City and published. The petitions included City's title and summary for the proposed measure, the full text of the proposed measure, and a notice of intention to circulate petition but, unlike the notice filed with City, the petitions' notice twice included the adjective "medical" before the term "marijuana regulations." The trial court denied the relief sought by Young, concluding the petitions' notice of intention did not substantially comply with section 9207 because it twice erroneously included the adjective "medical" before the term "marijuana regulations." On appeal, Young contends the court erred by concluding the petitions' notice of intention did not substantially comply with section 9207. As we explain below, we conclude the petitions' notice of intention substantially complied with section 9207 despite its minor defects and therefore reverse the judgment for Kelly.

FACTUAL AND PROCEDURAL BACKGROUND

On July 28, 2017, Young filed with City an initiative measure (Initiative) to amend City's marijuana regulations, along with a notice of intention (Notice of Intention) to circulate petitions for the Initiative. The Notice of Intention stated:

"Notice is hereby given by the persons whose names appear hereon of their intention to circulate a petition within the City of Imperial Beach for the purpose of amending marijuana regulations in the Imperial Beach Municipal Code.

¹ All statutory references are to the Elections Code.

"A statement of the reasons of [sic] the proposed action as contemplated in the petition is as follows:

"To clarify and refine marijuana regulations in the City of Imperial Beach.

"To strengthen patient rights' [sic] and safeguard patient privacy."

About two weeks later, Young received from City the ballot title and summary for the Initiative. The ballot title was: "An Initiative to Allow Marijuana Retailers, Cannabis Consumption Lounges, and Manufacturing Sites in Mixed-Use, Commercial Zones and to Allow Personal Cultivation of Marijuana in the City of Imperial Beach." The summary for the Initiative stated in part:

"Currently, medical marijuana distribution facilities are prohibited in [City], and commercial marijuana activities are subject to a moratorium. This initiative would authorize marijuana retailers, cannabis consumption lounges, and manufacturing sites, without size restrictions, in mixed use, commercial zones. . . .

"The initiative would impose operational regulations on marijuana retailers, cannabis consumption lounges, and manufacturing sites, . . . [¶] . . . [¶]

"The initiative would also allow indoor cultivation of medical marijuana of up to 100 square feet for a qualified patient, and a primary caregiver may use up to 100 square feet per qualified patient for indoor cultivation for a maximum of five qualified patients. Personal indoor cultivation would conform to state laws, not to be further restricted by the City. . . ."2

2 The summary for the Initiative, as provided to Young by City, stated in full: "Currently, medical marijuana distribution facilities are prohibited in [City], and commercial marijuana activities are subject to a moratorium. This initiative would authorize marijuana retailers, cannabis consumption lounges, and manufacturing sites, without size restrictions, in mixed use, commercial zones. The marijuana retailers and cannabis consumption lounges would be permitted in both the General Commercial & Mixed Use (C-MU-1) and the Seacoast Commercial & Mixed Use (C-MU-2) zones. Manufacturing sites would be permitted only in the General Commercial & Mixed Use

On August 24, Young published the Notice of Intention, ballot title, and summary in a local newspaper. The following day, Young began circulating his initiative petitions for signatures of registered voters in City. The petitions were circulated together with the ballot title, summary, full text of the Initiative, and a notice of intention that stated:

"Notice is hereby given by the persons whose names appear hereon of their intention to circulate a petition within the City of Imperial Beach for the purpose of amending **medical** marijuana regulations in the Imperial Beach Municipal Code.

(C-MU-1) zone. Marijuana retailers would not be permitted to locate within 900 feet of another retailer, playground or school. Cannabis consumption lounges would not be permitted to locate within 900 feet of another cannabis consumption lounge, day care center, or school. Marijuana manufacturing sites would not be permitted to locate within 900 feet of another manufacturing site. [¶] The initiative would impose operational regulations on marijuana retailers, cannabis consumption lounges, and manufacturing sites, including the requirements that these businesses install security cameras and alarms and employ a security guard, that the owners be subject to a background check, and that the businesses obtain a conditional use permit from the City, which is subject to revocation for violations of state or local laws. Marijuana retailers and cannabis consumption lounges must maintain minimum interior and exterior lighting standards, abide by certain sign requirements, and provide the name and emergency contact phone number of an operator or manager on the exterior of the business. [¶] Marijuana retailers may operate every day between 7:00 a.m. and 9:00 p.m., while cannabis consumption lounges may operate every day between 12:00 p.m. and 12:00 a.m. Consultations by medical professionals are not permitted at retailers or cannabis consumption lounges. Retailers may provide delivery services. [¶] The initiative provides that persons under 21 are prohibited from entering a cannabis consumption lounge. Cannabis consumption lounges shall only sell single service use quantities of cannabis products and shall not sell cannabis products to persons who display obvious signs of impairment. Manufacturing sites shall only produce edible cannabis products, and no public access or sales shall be allowed. The manufacturing sites shall not have any external signage, and the City would not be permitted to publish the address of any manufacturing site. [¶] The initiative would also allow indoor cultivation of medical marijuana of up to 100 square feet for a qualified patient, and a primary caregiver may use up to 100 square feet per qualified patient for indoor cultivation for a maximum of five qualified patients. Personal use indoor cultivation would conform to state laws, not to be further restricted by the City. [¶] Finally, the initiative provides that all construction and engineering activities for permits necessary to operate commercial marijuana activities be conducted by a skilled and trained workforce of skilled journeypersons or apprentices."

"A statement of the reasons of [sic] the proposed action as contemplated in the petition is as follows:

*"To clarify and refine **medical** marijuana regulations in the City of Imperial Beach.*

"To strengthen patient rights' [sic] and safeguard patient privacy."
(Boldface added.)

As indicated by the words in boldface *ante*, that notice of intention differed from the Notice of Intention that Young filed with City and published in the newspaper by its inclusion of the adjective "medical" twice before the term "marijuana regulations."

On February 6, 2018, Young attempted to file the signed petitions with Kelly in her capacity as the City Clerk. On February 8, Kelly rejected the petitions for filing, citing their noncompliance with section 9207. In her letter to Young, Kelly stated:

"In my capacity as City Clerk and Elections Official, I have reviewed the forms of the petitions to determine whether they complied with California Elections Code requirements prior to forwarding the petitions for signature verification to the County Registrar of Voters.

"Pursuant to Elections Code requirements, I must reject the petitions and not forward them to the County Registrar of Voters due to non-compliance with State law based on the following defects:

"Failure to include on each section of the petitions a copy of the Notice of Intention. Among other things, Elections Code section 9207 requires that: 'Each section of the petition shall bear a copy of the notice of intention. . . .' While the petitions contain *a* notice of intention, it is not *the* Notice of Intention that was filed with the City on July 28, 2017 and published by you for this initiative. This defect was on every section of the petitions that you turned in.

"In this situation, as the Elections Official, I have no choice but to reject the petitions for failure to comply with State law and take no further action on them. This rejection is solely based on the failure to follow the mandatory requirements of the Elections Code as specified above. I will take no further action regarding these

petitions except to retain them for the time period proscribed in Elections Code section 17200 and thereafter destroy them consistent with my duties as the Elections Official."

On March 1, Young filed the instant petition for alternative writ of mandate under section 13314³ challenging Kelly's rejection of his petitions and requesting the issuance of a writ directing her to accept for filing the signed petitions in support of the Initiative. The petition alleged that the error in twice including the adjective "medical" before the term "marijuana regulations" in the petitions' notice of intention was accidental. The petition alleged, inter alia, that "[c]learly the voters who signed the petitions for the Initiative understood the intent of the petition[s], since [their] signature page[s] contained an accurate title and summary of the petition, and their attached signature clearly shows the will of the voter to sign the petition. The entire initiative text was also accurately reproduced, allowing voters to fully review the proposed change in law. Further, the difference in the Notices of Intention is *de minimis*." The petition therefore argued Young's initiative petitions substantially complied with the law.

Kelly filed an answer and opposition to the petition, arguing, inter alia, that the petitions did not substantially comply with section 9207. Young filed a reply to Kelly's opposition.

The trial court issued a tentative ruling denying Young's petition and, after hearing arguments of counsel, the court confirmed its tentative ruling. The court found that the

³ Section 13314, subd. (a)(1).permits voters to "seek a writ of mandate alleging that an error or omission has occurred, or is about to occur, in the placing of a name on, or in the printing of, a ballot, county voter information guide, state voter information guide, or other official matter, or that any neglect of duty has occurred, or is about to occur."

defects in Young's petitions were "one[s] of substance" and therefore Kelly properly rejected the petitions based on their noncompliance with section 9207. On May 8, the court entered a judgment of dismissal in favor of Kelly and against Young. Young timely filed a notice of appeal.

DISCUSSION

I

Local Initiative Procedures Generally

Article II, section 11, of the California Constitution provides: "Initiative and referendum powers may be exercised by the electors of each city or county under procedures that the Legislature shall provide." "[T]he local electorate's right to initiative . . . is generally co-extensive with the legislative power of the local governing body. [Citation.]" (*DeVita v. County of Napa* (1995) 9 Cal.4th 763, 775.) There is a "constitutionally based presumption that the local electorate could legislate by initiative on any subject on which the local governing body could also legislate." (*Id.* at p. 777.) "It is ' "the duty of the courts to jealously guard this right of the people" [citation] "[I]t has long been our judicial policy to apply a liberal construction to this power wherever it is challenged in order that the right [to local initiative or referendum] be not improperly annulled." ' [Citation.]" (*Id.* at p. 776.)

The Legislature has enacted statutes that set forth procedures for local initiative measures. Section 9201 provides:

"Any proposed ordinance may be submitted to the legislative body of the city by a petition filed with the elections official of the legislative body, in the manner hereafter prescribed, after being

signed by not less than the number of voters specified in this article. The petition may be in separate sections, providing that the petition complies with this article. The first page of each section shall contain the title of the petition and the text of the measure. . . ."

Section 9202, subdivision (a) provides: "Before circulating an initiative petition in any city, the proponents of the matter shall file with the elections official a *notice of intention* to do so, which shall be accompanied by the written text of the initiative and may be accompanied by a written statement not in excess of 500 words, setting forth the reasons for the proposed petition. . . ." (Italics added.) After the proponent of an initiative petition has filed the notice of intention and a copy of the proposed measure with the elections official, that official must transmit a copy of the proposed measure to the city attorney, who must then prepare and return to that official a ballot title for, and summary of, the proposed measure. (§ 9203, subd. (a).) The elections official must then give the ballot title and summary to the proponent, who "shall, prior to its circulation, place upon each section of the petition, above the text of the proposed measure and across the top of each page of the petition on which signatures are to appear, in roman boldface type not smaller than 12 point, the ballot title prepared by the city attorney. The text of the measure shall be printed in type not smaller than 8 point." (§ 9203, subd. (b).) The proponent generally must then publish in a newspaper of general circulation the notice of intention, title, and summary for the proposed initiative measure. (§ 9205.) Importantly for this case, section 9207 provides:

"The proponents may commence to circulate the petitions among the voters of the city for signatures by any registered voter of the city after publication or posting, or both, as required by Section 9205, of the title and summary prepared by the city attorney. *Each section of*

the petition shall bear a copy of the notice of intention and the title and summary prepared by the city attorney." (Italics added.)

Within 180 days after the proponent received the title and summary, the proponent must file with the elections official the petition, together with all sections of the petitions bearing signatures. (§§ 9208, 9210.) The elections official must then examine the petition. (§ 9211.) "If the initiative petition is signed by not less than 10 percent of the voters of the city, . . . the legislative body shall do one of the following: [¶] (a) [a]dopt the ordinance, without alteration, at the regular meeting at which the certification of the petition is presented, or within 10 days after it is presented. [¶] (b) [s]ubmit the ordinance, without alteration, to the voters pursuant to Section 1405. [¶] [or] (c) [o]rder a report pursuant to Section 9212 at the regular meeting at which the certification of the petition is presented. When the report is presented to the legislative body, the legislative body shall either adopt the ordinance within 10 days or order an election pursuant to subdivision (b)." (§ 9215.) "If a majority of the voters voting on a proposed ordinance vote in its favor, the ordinance shall become a valid and binding ordinance of the city. . . ." (§ 9217.)

II

Substantial Compliance Doctrine

"[W]hen California courts have encountered relatively minor defects [in an initiative measure's compliance with the Elections Code] that the courts find could not have affected the integrity of the electoral process *as a realistic and practical matter*, past decisions generally have concluded that it would be inappropriate to preclude the

electorate from voting on a measure on the basis of such a discrepancy or defect. In such cases, as long as the fundamental purposes underlying the applicable constitutional or statutory requirements have been fulfilled, the decisions have concluded that there has been '*substantial compliance*' with the applicable constitutional or statutory provisions and that invalidation of a petition and preclusion of a vote on the measure is not warranted." (*Costa v. Superior Court* (2006) 37 Cal.4th 986, 1013 (*Costa*), second italics added.) "[P]ast California decisions have been most concerned with departures that affect the integrity of the process by *misleading* (or withholding vital information from) those persons whose signatures are solicited." (*Id.* at p. 1016, italics added.)

A primary concern in evaluating a petition's alleged defect is "whether the purpose of the technical requirement is frustrated by the defective form of the petition." (*Assembly v. Deukmejian* (1982) 30 Cal.3d 638, 652 (*Assembly*).) In *Assembly*, the court concluded the petition's typographical errors in listing the census tract numbers included in the text of the measure "were so minor as to pose *no danger of misleading the signers* of the petitions. They, therefore, do not affect the validity of the petitions." (*Id.* at p. 653, italics added.)

Costa stated:

"Over the years, numerous relatively minor departures from the constitutional and statutory requirements applicable to initiative and referendum measures have been found to satisfy the substantial compliance test, so long as the court was able to conclude that the departure in question, as a realistic and practical matter, did not undermine or frustrate the basic purposes served by the statutory requirements in ensuring the integrity of the initiative or referendum process." (*Costa, supra*, 37 Cal.4th at p. 1019, fn. omitted.)

In *Costa*, the court applied the doctrine of substantial compliance to uphold the validity of a petition despite inadvertent differences—including some substantive differences between the text of the initiative measure submitted to the Attorney General and the text of the measure printed on the petition circulated for signatures—and concluded the petition did not mislead the public or otherwise defeat or undermine the fundamental purposes underlying the applicable constitutional and statutory provisions. (*Costa, supra*, 37 Cal.4th at pp. 1022-1023.) The court explained that "it does not follow that the existence of *any* substantive difference or *any* difference in meaning between such versions *necessarily* results in the frustration of the purposes underlying the applicable statutory requirements." (*Id.* at p. 1023.) Because the Attorney General's title and summary for both the initial correct version of the text and the subsequent incorrect version were the same, the court concluded "the discrepancies in the two versions of the measures—albeit involving some substantive details rather than merely clerical errors—did not adversely affect the accuracy or completeness of the Attorney General's ballot title and summary with regard to the version of the measure that was circulated with the petition and thus did not mislead the public or otherwise frustrate the purpose underlying the constitutional and statutory provisions relating to the Attorney General's preparation of a ballot title and summary." (*Id.* at p. 1024.)

Costa stated that past cases "recognize[d] that inadvertent, good-faith human error cannot always be avoided and that it would be inconsistent with the fundamental constitutional interests of the tens or hundreds of thousands of persons who have signed an initiative or referendum petition to invalidate an otherwise qualified petition . . . when

it is apparent that the technical defect in question, as a realistic matter, did not adversely affect the integrity of the electoral process or frustrate the purposes underlying the relevant constitutional or statutory requirements."⁴ (*Costa, supra*, 37 Cal.4th at pp. 1027-1028.) In the circumstances of its case, *Costa* held:

"[B]ecause we conclude that the discrepancies between the version of the initiative measure submitted to the Attorney General and the version circulated for signature did not mislead the public or otherwise frustrate or undermine the purposes underlying any of the applicable constitutional or statutory provisions or threaten the integrity of the electoral process, we find there was substantial compliance with these requirements." (*Id.*, at p. 1028.)

Accordingly, *Costa* held that Proposition 77 was properly submitted to the voters. (*Ibid.*) The court emphasized that a crucial factor in its decision was that the discrepancy was inadvertent and that there was no evidence showing that the proponents intentionally circulated a version of the measure different from the version submitted to the Attorney General. (*Id.* at pp. 1028-1029.)

III

Petitions Substantially Complied with Section 9207

Young contends the trial court erred by concluding that because the notice of intention contained in the petitions for the Initiative twice included the adjective "medical" before the term "marijuana regulations," that notice of intention was different

⁴ *Costa* observed: "In many prior California decisions, courts have compared the titles and summaries of initiative petitions with the substantive provisions of the initiative measures themselves to determine whether the titles and summaries are accurate or potentially misleading [citations], and also have considered whether differences or omissions in the text of measures appended to a petition or included in a ballot pamphlet do or do not pose a realistic danger of misleading those who signed the petition or voted for the measure. [Citations.]" (*Costa, supra*, 37 Cal.4th at p. 1028.)

from the Notice of Intention filed with City, those differences were "one[s] of substance," and therefore the petitions did not substantially comply with section 9207.

A

In its order denying Young's petition for writ of mandate, the trial court stated:

"[T]he City's action in rejecting the package was not 'error.' City officials have a ministerial duty to reject initiative petitions which suffer from a substantial, as opposed to a technical, statutory defect which directly affects the quality of information provided to the voters. [Citation.]

"[Young] relies on 'substantial compliance.' With respect to election petitions, cases have applied this doctrine to excuse minor or technical defects that posed no danger of misleading voters. [Citation.]

"However, the Court finds that [the petition's] defect is one of substance. Even if on page four of the packet, the initiative's purpose was stated differently than what was submitted to the City[,] [t]he [initiative] was to allow both recreational and medical marijuana facilities within the City. However, [the] notice [of intention] in the packet stated the initiative regulated only medical marijuana. This would be [a] substantial distinction in the notice [of intention]. The Court cannot find as a matter of law that the City's action in rejecting the packets was a violation of the Election[s] Code."

Accordingly, the court entered a judgment of dismissal in favor of Kelly and against Young.

B

On appeal, we review questions of law independently. (*Alliance for a Better Downtown Millbrae v. Wade* (2003) 108 Cal.App.4th 123, 129 (*Alliance*).) In cases like the instant one where "the facts are undisputed and the issue involves statutory

interpretation, we exercise our independent judgment and review the matter de novo."

(Ibid.)

C

Young asserts the trial court erred by denying his petition for writ of mandate because the two defects in the petitions' notice of intention could not have misled the voters who signed the petitions about the true nature of the Initiative. In particular, he argues the court did not apply the correct legal standard in determining whether that notice of intention substantially complied with section 9207's requirements.

1. *Purposes of ballot title, summary, and notice of intention*

Our review of the relevant Elections Code sections, quoted above, shows that a proponent begins the process for placing an initiative measure on the ballot by first filing a notice of intention to do so, along with a copy of the text of the initiative measure, with the city's elections official and requesting that a ballot title and summary be prepared. (§§ 9202, subd. (a), 9203, subd. (a).) That official then transmits a copy of the text of that measure to the city attorney who must provide the official with a ballot title and summary of the proposed measure. (§ 9203, subd. (a).) In providing the ballot title and summary, the city attorney must give a true and impartial statement of the purpose of the proposed measure. (§ 9203, subd. (a); *Costa, supra*, 37 Cal.4th at p. 1023.) "[T]he principal purpose underlying the requirement that the proponents of an initiative measure submit a copy of it to the Attorney General [, or city attorney if it is a local measure,] prior to circulation is to enable that official to prepare an accurate and objective title and summary that must be prominently included in the circulated petition and that will

provide the voters whose signatures are sought with an accurate and objective description of the general subject matter of the initiative and its main points. [Citations.]" (*Costa*, at p. 1023.)

The proponent of the measure must print the ballot title and summary above the text of the proposed measure and across the top of each page of the petition where signatures are to appear. (§ 9203, subd. (b).) The requirement that each page of the petition include the title and summary of the proposed measure serves the primary purpose of "reduc[ing] the risk that voters will be misled when asked to sign a petition to qualify a proposed measure for the ballot by *making available to them a neutral explanation of the measure.*" (*Alliance, supra*, 108 Cal.App.4th at pp. 130-131, italics added; see also *MHC Financing Limited Partnership Two v. City of Santee* (2005) 125 Cal.App.4th 1372, 1389 (*MHC Financing*) ["The purposes served by the ballot title and summary requirement of section 9203, subdivision (b), are: (1) to reduce the risk that voters were misled when signing the petition; (2) to allow verification that the signers had a neutral explanation of the proposed ordinance available to them when they signed; and (3) to prevent signatures from being submitted in support of a different measure than that for which they were procured."].)

In addition to the requirement that each section of a petition include the accurate and objective ballot title and summary prepared by the city attorney and the full text of the initiative measure, each section of the petition must include a copy of the notice of intention. (§§ 9201, 9203, 9207.) It is implicit in the provisions of sections 9202 and 9207 that the primary purpose of the requirement that the petition include a copy of the

notice of intention is to inform voters that the proponent is circulating a petition for the initiative measure. (§§ 9202, subd. (a), 9207.) A secondary purpose of that requirement may be to also inform voters of the nature of the measure and/or the reasons for that measure. (*Ibid.*) In comparison, as discussed *ante*, it is the primary purpose of the ballot title and summary prepared by the city attorney to inform voters of the purpose of the initiative measure and to provide voters with an accurate and objective description of that measure. (§ 9203; *Costa, supra*, 37 Cal.4th at p. 1023; *Alliance, supra*, 108 Cal.App.4th at pp. 130-131; *MHC Financing, supra*, 125 Cal.App.4th at p. 1389.)

2. *Substantial compliance in this case*

Given the above purposes of the Elections Code requirement that each section of a petition for an initiative measure include a true and impartial ballot title and accurate and objective summary of the measure prepared by the city attorney, together with a copy of the notice of intention and the full text of the measure, we conclude that the primary purpose of section 9207's requirement that Young include a copy of the Notice of Intention on each section of the petition was to inform voters that he was circulating a petition for the initiative measure described by the petition's title and summary, which presumably were prepared by City's attorney pursuant to section 9203, subdivision (a). As Young asserts, it was the primary purpose of the ballot title and summary prepared by City's attorney, which were included on each section of the petitions, and *not* of the notice of intention, to inform voters of the general subject matter of the initiative measure and its main points. (*Costa, supra*, 37 Cal.4th at p. 1023.) Kelly does not dispute that the ballot title and summary prepared by City's attorney and included on each section of the

petitions circulated by Young accurately and objectively described the Initiative. Instead, she argues that the notice of intention included in the petitions was not an identical copy of the Notice of Intention filed with City and published by Young. Specifically, she notes that the petitions' notice of intention twice included the adjective "medical" before the term "marijuana regulations."

Kelly correctly asserts that Young did not comply with section 9207's requirement that his petitions include an exact copy of the Notice of Intention. Section 9207 provides: "Each section of the petition shall bear a copy of the notice of intention" In so doing, section 9207 clearly refers to section 9202, which requires a proponent to file with the elections official a notice of intention to circulate an initiative petition. (§ 9202, subd. (a).) In this case, the section 9202 notice of intention is the Notice of Intention filed by Young, which notice does not include the adjective "medical" before the term "marijuana regulations." Because the notice of intention included in Young's petitions was different from, and not an exact copy of, the Notice of Intention, Kelly correctly concluded that the petitions did not technically comply with section 9207's requirements.

However, her review of the petitions should not have ended there. Rather, she should have then addressed the question, as we now do, of whether the petitions substantially complied with section 9207 despite their technical noncompliance with its requirement that they include a copy of the Notice of Intention. As explained below, based on our independent review of the record in this case, we conclude the petitions substantially complied with section 9207. Therefore, Kelly erred by rejecting them and the trial court erred by denying the instant petition for writ of mandate relief.

First, the notice of intention included in Young's petitions effectively informed voters who signed them that Young intended to circulate, and was, in fact, circulating, petitions for the Initiative. In so doing, that notice of intention accomplished the primary purpose of section 9207. As stated *ante*, the primary purpose of including a copy of the notice of intention in a petition is to inform voters that the proponent is circulating a petition for the initiative measure. (§§ 9202, subd. (a), 9207.)

Second, that notice of intention also informed voters of the nature of the measure and the reasons for that measure, which is a secondary purpose of section 9207. (§§ 9202, subd. (a), 9207.) In particular, the notice stated that the petition was being circulated "for the purpose of amending medical marijuana regulations in [City]" and that one of the reasons for the measure was "[t]o clarify and refine medical marijuana regulations in [City]." To the extent that stated purpose and statement of reasons twice included the adjective "medical" before the term "marijuana regulations," the notice of intention inaccurately stated the Initiative's purpose and reasons by ostensibly (and erroneously) limiting its proposed amendments of City's marijuana regulations to only medical marijuana regulations.

However, under the doctrine of substantial compliance, we do not consider the defective notice of intention in isolation, but must also consider the likely effect of the other portions of the petition. In this case, as discussed *ante*, the petition's title and summary provided voters with an accurate and objective description of the Initiative. In particular, neither the title nor the summary included any language limiting the proposed amendments to City's marijuana regulations to only medical regulations. Furthermore,

the petition included the full text of the Initiative. Therefore, considering the petition as a whole, we conclude that the notice of intention included in the petition could not, as a realistic and practical matter, mislead the public regarding Young's intention to circulate the petitions or otherwise frustrate or undermine the purposes of section 9207 or threaten the integrity of the electoral process. (*Costa, supra*, 37 Cal.4th at pp. 1013, 1019, 1022-1023, 1028.)

Furthermore, in realistically evaluating the effect of the minor defect in the petition's notice of intention, we conclude that although the defect was one of substance, it could not, contrary to Kelly's assertion, mislead the voters regarding the purpose of the notice of intention or, more broadly, the purpose and provisions of the Initiative. Contrary to the apparent positions of Kelly and the trial court, a substantive difference between the Notice of Intention and the petition's notice of intention would not necessarily mislead the public or frustrate section 9207's purposes. (*Costa, supra*, 37 Cal.4th at p. 1023 ["it does not follow that the existence of *any* substantive difference or *any* difference in meaning between such versions *necessarily* results in the frustration of the purposes underlying the applicable statutory requirements"].) Because we conclude the fundamental purposes underlying section 9207 have been fulfilled, the notice of intention included in the petition substantially complied with section 9207 and therefore Kelly should not have rejected Young's petitions. (Cf. *Costa*, at pp. 1013, 1028; *Assembly, supra*, 30 Cal.3d at p. 653.)

D

To the extent Kelly alternatively argues the trial court's decision *could* have been based on an equitable finding that Young had "unclean hands," the court did *not* make such a factual finding, nor would the record on appeal have supported such a finding. In support of his petition for writ of mandate, Young submitted a declaration in which he described how the error in the petition's notice of intention occurred. When he gave his first draft of the notice of intention to Cynara Velazquez for formatting the petition packets, he included the adjective "medical" before the term "marijuana regulations." However, he subsequently revised that language, omitting the adjective "medical," and then filed the revised notice of intention with City. Also in support of his petition for writ of mandate, Young submitted a declaration from Velazquez in which she stated that she had received Young's first draft of the notice of intention that included the adjective "medical." Velazquez then stated: "5. While preparing the [petition] packets, I mistakenly used the first draft notice of intention that Mr. Young had sent to me. I cut and pasted that notice into the signature packet. [¶] 6. I did not realize that Mr. Young had removed one word from the notice of intention that he had filed with [City] on July 28, 2017. [¶] 7. For this reason, the signature packets contained a slightly different notice of intention than the one that Mr. Young filed with the City and then published in the newspaper." Based on the declarations of Young and Velazquez, it is clear that the erroneous inclusion of the adjective "medical" before the term "marijuana regulations" in the petition's notice of intention was due to inadvertence. The record on appeal does not contain any evidence supporting a finding, and therefore Kelly merely speculates, that Young and/or Velazquez intentionally included the adjective "medical" before the term

"marijuana regulations" in the petition's notice of intention. (Cf. *Costa, supra*, 37 Cal.4th at pp. 1028-1029.) Therefore, contrary to Kelly's assertion, the doctrine of unclean hands does not provide an alternative ground on which to support the trial court's decision.

DISPOSITION

The judgment is reversed and the matter is remanded with directions that the superior court vacate its order denying the petition for alternative writ of mandate and issue a new order granting that petition. Appellant is awarded his costs on appeal.

O'ROURKE, J.

WE CONCUR:

McCONNELL, P. J.

BENKE, J.